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motives, considered as the moral inducements for their votes, will vary with the different members of the legislative body. The diverse character of such motives, and the impossibility of penetrating into the hearts of men and ascertaining the truth, precludes all such inquiries as impracticable and futile. And in the present case, even if the motives of the supervisors were as alleged, the ordinance would not be thereby changed from a legitimate police regulation, unless in its enforcement it is made to operate only against the class mentioned; and of this there is no pretence.

It follows that the several questions certified must be answered in the negative and the judgment be affirmed;

And it is so ordered.



UNITED STATES, Intervenor, v. INDIANAPOLIS & ST.
LOUIS RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF INDIANA.

Submitted January 23, 1885.—Decided March 16, 1885.

Interest on bonds of a railroad corporation earned by the company during the year 1871, but payable by the terms of the coupon January 1, 1872, is not subject to the tax authorized by § 15, act of July 14, 1870, 16 Stat. 260, to be levied and collected for and during the year 1871.

The facts are stated in the opinion of the court.

Mr. Solicitor-General for appellant.

Mr. John T. Dye for appellee.

MR. JUSTICE HARLAN delivered the opinion of the court.

This suit was brought to foreclose certain mortgages given to secure bonds issued by the Indianapolis and St. Louis Railroad Company. A final decree of foreclosure having been passed, the mortgaged property was sold, and the sale was

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confirmed by the court. The United States intervened by petition, and asked that certain sums, alleged to be due to the government on account of taxes, be first paid out of the proceeds.

It appeared that certain interest coupons of the bonds of the company were payable, and were paid, on the first days of September and November, 1870, and that certain other interest coupons of the same company were payable on the first day of January, 1872, and were then paid out of its earnings made prior to that date and during the year 1871.

The court below held: 1. That the act of July 14, 1870, 16 Stat. 260, ch. 255, § 15, did not impose an internal revenue tax on interest coupons of the bonds of the railroad company payable and paid during the last five months of that year. 2. That the law did not impose an internal revenue tax on interest coupons of such bonds, payable and paid on the 1st day of January, 1872.

The United States acquiesces in the judgment in respect of the first of these claims, but contends that the act of July 14, 1870, imposed a tax upon interest coupons that were paid out of the corporation earnings for 1871, although such payment was not due nor made until January 1, 1872. The question depends upon the construction of § 15 of the act of 1870, which provides, "That there shall be levied and collected, *for and during the year 1871*, a tax of two and one-half per centum on the amount of all interest or coupons paid on bonds or other evidences of debt issued and payable in one or more years after date, by any of the corporations in this section hereinafter enumerated [railroad corporations being among the number], and on the amount of all dividends of earnings, income or gains hereafter declared . . . whenever and wherever the same shall be payable, . . . and on all undivided profits of any such corporation which have accrued and been earned and added to any surplus, contingent, or other fund," &c.

In construing this section in *Railroad Co. v. United States*, 101 U. S. 543, 550, the court said: "The interest in this case was neither payable nor paid in 1871, and, as the tax is not leviable or collectible until the interest is payable, we see no

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way in which the company can be charged on this account. The tax is not on the interest as it accrues, but when it is paid. No provision is made for a *pro rata* distribution of the burden over the time the interest is accumulating, and as the tax can only be levied for and during the year 1871, we think, if the interest is in good faith not payable in that year, the tax is not demandable, either in whole or in part."

This decision covers the present case. The claim of the United States is not for a tax on dividends or gains, but is distinctly for a tax on interest accruing on the bonds of the railroad company, and which was not payable nor paid until after the year 1871, for and during which the act directed it to be levied and collected. We do not perceive that the liability of the corporation for tax on this interest, as such, is affected by the circumstance that the interest was paid out of the earnings made in the previous year.

Judgment Affirmed.

Ex parte FISK.

ORIGINAL.

Argued January 6, 1885.—Decided March 2, 1885.

The principle that in actions at law the laws of the States shall be regarded as rules of decision in the courts of the United States, § 721 Rev. Stat., and that the practice, pleadings, and forms and modes of proceedings in such cases shall conform as near as may be to those of the courts of the States in which the courts sit, § 914, is applicable only where there is no rule on the same subject prescribed by act of Congress, and where the State rule is not in conflict with any such law.

The statute of New York, which permits a party to a suit to be examined by his adversary as a witness at any time previous to the trial in an action at law, is in conflict with the provision of the Revised Statutes of the United States which enacts that "The mode of proof in the trial of actions at common law shall be by oral testimony and examination of witnesses in open court, except as hereinafter provided." § 861.

None of the exceptions afterwards found in §§ 863, 866 and 867 provide for such examination of a party to the suit in advance of the trial as the statute of New York permits.